

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

TROY EMANUEL, JR.,

Plaintiff,

v.

D. KIRKLAND, *et al.*,

Defendants.

Case No. 3:21-CV-00308-CLB

**ORDER DENYING PLAINTIFF'S
MOTIONS FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

[ECF Nos. 29, 30]

This case involves a civil rights action filed by Plaintiff Troy Emanuel, Jr. ("Emanuel") against Defendant asserting an excessive force claim in violation of Emanuel's Eighth Amendment rights. (ECF Nos. 6, 7.) Currently pending before the Court are Emanuel's motions for temporary restraining order preliminary injunction. (ECF Nos. 29, 30.)¹ For the reasons stated below, Emanuel's motions for temporary restraining order and preliminary injunction, (ECF Nos. 29, 30), are denied.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

Emanuel is an inmate in the custody of the Nevada Department of Corrections ("NDOC") and is currently housed at Ely State Prison ("ESP") in Ely, Nevada. (ECF No. 1-1.) On July 21, 2021, Emanuel submitted his initial complaint and an application to proceed *in forma pauperis*. (ECF Nos. 1, 1-1.) In the complaint, Emanuel alleged the following: On January 4, 2021, Defendant Kirkland came to Plaintiff's door to serve him food. (ECF No. 1-1 at 4.) When Kirkland opened the food slot, Plaintiff put one hand on top of his food tray and asked Kirkland why he had not fed a black inmate with a red box on his door. (*Id.*) Kirkland responded by slamming Plaintiff's arm in the food slot four or five times and then putting his body weight on the food slot to smash Plaintiff's arm even more. (*Id.*) Kirkland said he was tired of Plaintiff and that if Plaintiff did not close the food

¹ These motions are identical documents that were improperly docketed twice. (ECF Nos. 29, 30.)

1 slot, he would break Plaintiff's arm. (*Id.*) Plaintiff told Kirkland that he had violated
2 Plaintiff's rights by using excessive force. (*Id.*) Kirkland admitted that he was in the wrong
3 and gave Plaintiff a food tray. (*Id.*) However, Kirkland then wrote a false charge against
4 Plaintiff. (*Id.*) The false charges were ultimately dismissed because the video proved that
5 Plaintiff had not done anything wrong. (*Id.*) Defendants Ruebart, Gittere, and Drummond
6 did not do anything to correct Kirkland after the incident. (*Id.* at 5.)

7 Pursuant to 28 U.S.C. § 1915A(a), the District Court screened the complaint on
8 December 27, 2022. (ECF No. 5.) Based on the allegations in the complaint, the Court
9 determined Emanuel could proceed on an Eighth Amendment excessive force claim
10 against Defendant Kirkland. (*Id.* at 7.)

11 **II. EMANUEL'S MOTIONS FOR TEMPORARY RESTRAINING ORDER AND** 12 **PRELIMINARY INJUNCTION**

13 On December 29, 2023, Emanuel filed the instant motions for temporary
14 restraining order and preliminary injunction. (ECF Nos. 29, 30.) The motions allege that
15 after Emanuel filed this and other lawsuits against various wardens and Defendant,
16 Defendant and others have retaliated against him in several ways. (*Id.*) As such, Emanuel
17 requests that the Court order "Kirkland and his CERT team friends away from him, and
18 to please transfer him to another prison." (*Id.* at 3.) He also requests that the Court enter
19 an order to not allow "these people to lie to [the Court]" and to prevent them from
20 retaliating against him. (*Id.*)

21 **III. LEGAL STANDARD**

22 The purpose of a preliminary injunction or temporary restraining order is to
23 preserve the status quo if the balance of equities so heavily favors the moving party that
24 justice requires the court to intervene to secure the positions until the merits of the action
25 are ultimately determined. *University of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).
26 A preliminary injunction is an "extraordinary and drastic remedy" that is "never awarded
27 as of right." *Munaf v. Geren*, 553 U.S. 674, 689-90 (2008) (citations omitted). Instead, in
28 every case, the court "must balance the competing claims of injury and must consider

1 the effect on each party of the granting or withholding of the requested relief.” *Winter v.*
 2 *Natural Resources Defense Council, Inc.*, 555 U.S. 7 (2008) (quotation marks and
 3 citation omitted). The instant motion requires the Court determine whether Plaintiff has
 4 established the following: (1) he is likely to succeed on the merits; (2) he is likely to suffer
 5 irreparable harm in the absence of preliminary relief; (3) the balance of equities tips in
 6 his favor; and (4) an injunction is in the public interest. *Winter*, 555 U.S. at 20 (citations
 7 omitted).

8 An even more stringent standard is applied where mandatory, as opposed to
 9 prohibitory preliminary relief is sought. The Ninth Circuit has noted that although the
 10 same general principles inform the court’s analysis, “[w]here a party seeks mandatory
 11 preliminary relief that goes well beyond maintaining the status quo pendente lite, courts
 12 should be extremely cautious about issuing a preliminary injunction.” *Martin v.*
 13 *International Olympic Committee*, 740 F.2d 670, 675 (9th Cir. 1984); *see also Committee*
 14 *of Cent. American Refugees v. Immigration & Naturalization Service*, 795 F.2d 1434,
 15 1442 (9th Cir. 1986). Thus, an award of mandatory preliminary relief is not to be granted
 16 unless both the facts and the law clearly favor the moving party and extreme or serious
 17 damage will result. *See Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015) (quoting
 18 *Anderson v. United States*, 612 F.2d 1112, 1114 (9th Cir. 1979)).

19 Finally, the Prison Litigation Reform Act (PLRA) mandates that prisoner litigants
 20 must satisfy additional requirements when seeking preliminary injunctive relief against
 21 prison officials:

22 Preliminary injunctive relief must be narrowly drawn, extend no further than
 23 necessary to correct the harm the court finds requires preliminary relief, and
 24 be the least intrusive means necessary to correct that harm. The court shall
 25 give substantial weight to any adverse impact on public safety or the
 operation of a criminal justice system caused by the preliminary relief and
 shall respect the principles of comity set out in paragraph (1)(B) in tailoring
 any preliminary relief.

26 18 U.S.C. §3626(a)(2). Thus, section 3626(a)(2) limits the Court’s power to grant
 27 preliminary injunctive relief to inmates. *Gilmore v. People of the State of California*, 220
 28 F.3d 987, 998 (9th Cir. 2000). “Section 3626(a)(2) . . . operates simultaneously to restrict

1 the equity jurisdiction of federal courts and to protect the bargaining power of prison
2 administrators-no longer may courts grant or approve relief that binds prison
3 administrators to do more than the constitutional minimum.” *Id.* at 999.

4 Where the motion for preliminary injunction is related to new allegations of
5 misconduct—distinct from the allegations at issue in the complaint—such a motion must
6 be denied. See e.g., *Padilla v. Nevada*, No. 2:08-cv-410-LRH-RAM, 2011 WL 2746653,
7 at *8 (D. Nev. June 3, 2011) (denying request for preliminary injunction unrelated to
8 claims in the complaint); *Mitchell v. Haviland*, No. 2:09-cv-3012-JAM-KJN, 2014 WL
9 458218, at *2 (E.D. Ca. February 4, 2014) (denying motion for preliminary injunction
10 where the conduct asserted in the motions is based on new assertions of misconduct
11 unrelated to the acts of misconduct asserted in the complaint); *Burton v. Paramo*, No.
12 3:17-cv-1953-BEN-KSC, 2017 WL 6048805, at *4 (S.D. Ca. Dec. 5, 2017) (denying
13 motion for preliminary injunction seeking injunction claimed retaliation for bringing
14 underlying lawsuit because those acts were separate from claims asserted within the
15 complaint itself.)

16 A preliminary injunction is an extraordinary remedy never awarded as of right.
17 *Winters*, 555 U.S. at 24. Therefore, as a threshold matter, the court lacks authority to
18 issue injunctive relief when there is no “relationship between the injury claimed in the
19 motion for injunctive relief and the conduct asserted in the underlying complaint.” *Pac.*
20 *Radiation Oncology, LLC v. Queen’s Medical Ctr.*, 810 F.3d 631, 636 (9th Cir. 2015)
21 (citing *Devose v. Herrington*, 42 F.3d 470, 471 (8th Cir. 1994)). Thus, the moving party
22 must establish there is a sufficient nexus between the claims raised by the injunctive
23 relief motion and the conduct asserted in the underlying complaint. *Id.*

24 **IV. DISCUSSION**

25 Having reviewed Emanuel’s motions with the above-cited principles in mind, the
26 Court finds that Emanuel has not made the showing required for an injunction to issue.
27 First, the issues raised on the present motions involve issues that arise from new facts
28 and circumstances that are distinct from the facts and circumstances that underlie this

lawsuit.

In the current motions, Emanuel asserts that after he filed this and other lawsuits against various wardens and Defendant, Defendant and others have retaliated against him in several ways. (ECF Nos. 29, 30.) He claims that these events took place between June 2023 and December 2023. (*Id.* at 2-3.) However, the facts and circumstances at issue *in this lawsuit* relate to single excessive force incident that occurred on January 4, 2021. (See ECF Nos. 6, 7.) The events in the complaint pre-date Emanuel's new claims of retaliation by more than two years. Therefore, these motions seek relief based on new allegations of alleged misconduct – that are distinct from issues presented in the complaint – and must be denied. See *e.g., Padilla*, 2011 WL 2746653 at *8 (denying request for preliminary injunction unrelated to claims in the complaint).

In addition, Emanuel's motions must also be denied because Emanuel has failed to address or establish any of the *Winters* factors support the imposition of the extreme injunctive remedy sought by these motions. Specifically, Emanuel failed to provide any evidence that: (1) he is likely to succeed on the merits; (2) that he is likely to suffer irreparable harm in the absence of preliminary relief; (3) that the balance of equities tips in his favor; or (4) that an injunction is in the public interest. *Winter*, 555 U.S. at 20 (citations omitted). Therefore, the motions must be denied on this additional basis.

V. CONCLUSION

IT IS THEREFORE ORDERED that Emanuel's motions for preliminary injunction and temporary restraining order, (ECF Nos. 29, 30), be denied.

DATED: January 5, 2024.


UNITED STATES MAGISTRATE JUDGE